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10 *Attorneys for Defendants*
11 *C. R. Bard, Inc. and*
12 *Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION *IN LIMINE* NO. 5 TO
EXCLUDE REFERENCE TO
FAILURE RATES,
COMPLICATION RATES,
PERCENTAGES AND
COMPARATIVE ANALYSIS OF
INJURIES BEYOND THOSE
PRODUCED IN COMPLAINT
FILES**

(Assigned to the Honorable David G. Campbell)

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively “Bard”) submit this response in opposition to Plaintiff’s Motion *in Limine* No. 5 and respectfully show the Court as follows:

ARGUMENT AND CITATION OF AUTHORITY

In response to the Plaintiff's Motion *in Limine* No. 5 about reference to failure rates, complication rates, percentages and comparative analysis of injuries beyond those produced in complaint files, Bard notes that the Motion is somewhat ambiguous, making it difficult for Bard to determine exactly what evidence the Plaintiff seeks to exclude.

The issue of producing updated complaint files and adverse event tracking system information was discussed during the October 29, 2015 Case Management Hearing. Counsel for Bard informed the Court that all Bard complaint files and adverse event tracking system information, except for the Simon Nitinol Filter and Denali had been produced, and that Bard would produce updated material to the Plaintiff. *See* Hr'g Tr. 107:19-23; 110:20 to 111:1, Oct. 29, 2015, excerpt attached hereto as Exhibit A. The Court ordered Bard to produce the updated material in Case Management Order No. 2 (Doc. 249). And Bard produced the material for all failure modes, as ordered, in Bard's Responses and Objections to Plaintiffs' Second Requests for Production of Documents.¹ Thus, the Plaintiff's Motion should be denied as moot.²

CONCLUSION

20 For these reasons, Bard respectfully requests that this Court deny the Plaintiff's
21 Motion *in Limine* No. 5.

22 ||| RESPECTFULLY SUBMITTED this 9th day of February, 2018.

s/ Richard B. North, Jr.
Richard B. North, Jr.

²⁵ ¹ Although the Plaintiff asserts that Bard produced only complaint files concerning death, perforation, tilt, fracture, and migration, Bard actually produced complaint files regarding *all* failure modes, including, for example, pulmonary embolism causing death, recurrent pulmonary embolism, and hemorrhage.

²⁷ Bard reserves the right to object to the introduction of its complaint files, or to offer them as evidence, depending on the context. Bard, however, disputes the premise of the Plaintiff's instant motion.

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22 **Bard Peripheral Vascular, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.
Richard B. North, Jr.